

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/ SB 298

SPONSOR: Comprehensive Planning and Senator Clary

SUBJECT: Condominiums

DATE: March 29, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Fav/CS
2.	_____	_____	RI	_____
3.	_____	_____	JU	_____
4.	_____	_____	CM	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The committee substitute (CS) provides that actions taken by board members appointed by the developer are considered actions of the developer, and the developer is responsible to the association and its members for all such actions. It requires that claims against a developer by an association alleging certain defects must be examined and certified by a licensed professional.

In addition, the CS provides that a person has no cause of action for oral representations by a developer, or for information not contained in the developer’s promotional material, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising. The CS also requires that a form disclaimer to this effect be included in contracts for the sale of residential condominium units by developers.

This CS substantially amends the following sections of the Florida Statutes: 718.301, 718.503, and 718.506.

**II. Present Situation:**

Chapter 718, F.S., governs condominium associations. Specifically, s. 718.111, F.S., provides the powers and duties of an association, including the maintenance, management, and operation of the condominium property. The association is responsible for maintaining its official records under s. 718.111(12), F.S. Certain records shall not be made available to unit owners. Those records are:

- Any record protected by the lawyer-client privilege under s. 90.502, F.S., and any record protected by the work-product privilege;

- Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit; and
- The medical records of unit owners.<sup>1</sup>

Chapter 718, F.S., nor any other provision of law, requires that any specific procedure be followed before a condominium association may bring a lawsuit. Part III of chapter 718, ss. 718.301-718.303, F.S., provides for the rights and obligations of an association. Specifically, s. 718.301, F.S., allows condominium unit owners to gradually acquire a greater percentage of the directorships on a condominium association's board from the developer as units are sold.

Under s. 718.301(1), F.S., unit owners, other than the developer, that own 15 percent or more of the units in a condominium that is to be operated ultimately by the association are entitled to elect not less than one-third of a board's members. Unit owners, other than the developer, are entitled to elect not less than a majority of the members of the board of administration of an association:

- (a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- (b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- (c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;
- (d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business; or
- (e) Seven years after recordation of the declaration of condominium; or, in the case of an association which may ultimately operate more than one condominium, 7 years after recordation of the declaration for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after recordation of the declaration creating the initial phase, whichever occurs first.

Pursuant to s. 718.301(4), F.S., when the unit owners obtain a majority of the seats on a condominium association's board, the unit owners assume control of the association from the developer. Section 718.301(5), F.S., provides that until the developer relinquishes control of the association, it is liable to third parties for any violation of ch. 718, F.S., the Condominium Act, or rules implementing the act.

Part V of chapter 718, ss. 718.501-718.509, F.S., govern the regulation and disclosure prior to sale of residential condominiums. Under s. 718.503, F.S., contracts for the sale of condominium units must include certain specified disclosures to the prospective purchaser. These disclosures vary according to whether the unit is being sold by the developer or by a current unit owner.

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<sup>1</sup> S. 718.111(12)(c), F.S.

When sold by a developer, s. 718.503(1)(a)2., F.S., currently requires that the following caveat appear in conspicuous type on the first page of the contract:

ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

Under s. 718.506(1), F.S., a person who pays anything of value toward the purchase of a condominium unit in reasonable reliance upon a material statement or information that is false or misleading published by or under the authority of the developer has a cause of action for damages, as well as a cause of action to rescind the contract, if suit is brought prior to closing on the sale. Such statements or information may include, but are expressly not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising. In any action for relief under s. 718.506(1), F.S., the prevailing party is entitled to costs and reasonable attorneys' fees.<sup>2</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 718.301, F.S., to provide that actions taken by board members appointed by the developer are considered actions of the developer, and that the developer is responsible to the association and its members for all such actions. It also provides that in any association's claim against a developer alleging a defect in design, structural elements, construction, mechanical, electrical, fire protection, plumbing or other element that requires a licensed professional for design or installation, the defect must be examined and certified by the same type of licensed professional.

**Section 2** amends s. 718.503(1)(a), F.S., to require additional disclosures by developers in contracts for the sale of condominium units. Specifically, the contract must disclose that a purchaser has no claim or cause of action against the developer for the purchaser's reliance on oral representations or information not contained in the contract or prospectus. Also, the contract must disclose that a purchaser may make a claim or institute a cause of action against the developer only for the purchaser's reliance on terms of the contract or matters set forth in the prospectus.

**Section 3** amends s. 718.506, F.S., to provide that a person has no cause of action for any oral representation or information that is not contained in the developer's advertising or promotional materials, including, but not limited to, a prospectus and its exhibits, brochures, or newspaper advertising.

**Section 4** provides an effective date of July 1, 2004.

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<sup>2</sup> Section 718.506(2), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:****Access to Courts**

Article I, section 21 of the Florida Constitution provides: “The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.”<sup>3</sup> The Legislature, however, may restrict access under certain circumstances:

[W]here a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla.Stat. s 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.<sup>4</sup>

The CS amends s. 718.506, F.S., to prohibit a cause of action against a developer for any oral representation or information that is not contained in the developer’s advertising or promotional materials. Under existing law, a developer must include a statement on the first page of any contract for the sale or lease of a residential condominium unit that oral representations may not be relied on as correctly stating the representations of the developer.<sup>5</sup>

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

<sup>3</sup> See generally 10A FLA. JUR. 2D CONSTITUTIONAL LAW §§ 360-69.

<sup>4</sup> See *Kluger v. White*, 281 So.2d 1, 4 (1973).

<sup>5</sup> Section 718.503(1)(a)2., F.S.

**B. Private Sector Impact:**

The CS provides that a purchaser does not have a cause of action against the developer for the purchaser's reliance on oral representations or information not contained in the contract or prospectus.

**C. Government Sector Impact:**

None.

**VI. RULE-MAKING AUTHORITY:**

None.

**VII. Technical Deficiencies:**

None.

**VIII. Related Issues:**

None.

**IX. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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